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NATIONAL ENVIRONMENTAL POLICY ON INTERNATIONAL FINANCING ACT OF 1989

JUNE 28 (legislative day, JUNE 11), 1990.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1045]

The Committee on Environment and Public Works, to which was referred the bill (S. 1045) to establish a National Environmental Policy on the participation of the United States in international financing having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

BACKGROUND AND DESCRIPTION OF PROVISIONS

In recent years there has been increasing concern about the environmental impact of projects funded through multilateral development banks (MDBs). Poorly designed projects have contributed to deforestation, reduced land productivity, and impoverished populations through resettlement programs.

The United States cannot directly institute changes within the multilateral banks to require that proposed projects meet certain environmental or economic standards. However, the United States is in a position to influence constructive reforms. Recent annual appropriations laws have required the United States to use available channels to promote environmental protection and resource conservation techniques.

While these requirements have served as the catalyst for significant improvement in the environmental awareness of the multilateral banks, and the hiring of additional personnel, there remain three identified shortfalls in current MDB environmental review processes. First, they appear to lack consistency, making it difficult

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to judge the environmental soundness of each project against a uniform standard. Second, information on the environmental impacts of a particular project is not always available to MDB-member countries, such as the United States, until it is too late to affect environmentally constructive changes in the project proposal. And third, documentation on the environmental review is very often unavailable to the general public, thus rendering impotent an important and well-recognized "control mechanism" for assuring the quality of environmental impact assessments.

The National Environmental Policy on International Financing Act, S. 1045, was introduced May 18, 1989, by a group of 25 Senators, including all 16 members of the Environment and Public Works Committee, to address these three issues of consistency, timeliness, and public availability of MDB environmental impact assessments.

The bill amends the National Environmental Policy Act (NEPA) to add a new section 106. This new section provides that, effective July 1, 1991, the United States' executive directors to the MDBs are required to request environmental impact assessment information from the banks no less than 120 days before a vote on a loan proposal. The institutions included are the World Bank and all of its subsidiary financial institutions, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund.

The Council on Environmental Quality (CEQ) is required to develop criteria for MDB environmental impact assessment (distinct from domestic environmental impact statement requirements) using internationally accepted principles. These criteria must include, at a minimum, the provision of opportunities for public comment and a review of alternatives. Additional criteria that have received widespread acceptance as integral parts of an adequate environmental impact assessment may be identified as well. The CEQ should look to the models identified in section 2, paragraph (5) of the bill for such criteria.

Neither the Department of the Treasury nor the executive director will be responsible for verifying the content of the environmental impact assessment documentation received from an MDB, other than to identify which criteria are not met, if any. A statement of findings in this regard is to accompany the proposed action through agency review processes and shall be made available to the public and to donor and borrower nations. Any other pertinent information that is available through sources such as the Working Group on Multilateral Assistance or the Agency for International Development's Early Warning Program" shall be included in the required statement of findings.

New subsection 106(d) of NEPA instructs the United States' executive directors to the MDBs not to support any proposal with significant environmental impacts unless the proposal is accompanied by an assessment which (1) meets the minimum criteria identified by the CEQ pursuant to new subsection (b), and (2) has been available for at least 120 days prior to the vote on the proposal. This provision will not necessarily trigger active opposition by the United States to any particular proposal. Rather, the executive di-

rector should fully utilize the voice and vote of the United States to encourage the implementation of environmental impact assessment procedures within the MDB that meet the internationally accepted criteria identified by CEQ.

Within 30 days after the date of enactment of this legislation, the executive directors are required to begin negotiating with the MDBs to promote the development and implementation of the environmental impact assessment process. Federal agencies are authorized to provide, from resources otherwise available, technical assistance and personnel to the banks upon request.

The bill contains two reporting requirements. Within the first year after enactment, the Secretary of the Treasury is to report to the committees of jurisdiction in Congress on the status of MDB environmental impact assessment procedures and the effectiveness of U.S. negotiations and assistance. It is expected that this report will allow Congress to determine the degree to which MDBs will be able to produce environmental documentation that will meet the minimum criteria prior to the effective date of the provision regarding the authority of the executive directors to support proposals in the absence of such documentation.

A second reporting requirement is directed at the Council on Environmental Quality. This report, including an interim report due no later than March 1, 1992, directs CEQ to assess the efficacy of the United States' effort to encourage consistent and timely environmental assessment. A final report on these findings is due on later than January 1, 1993. The report should look specifically at the mechanisms employed under the National Environmental Policy on International Financing Act to determine whether or not they are achieving their intended goals.

Hearings

The Subcommittee on Hazardous Wastes and Toxic Substances of the Committee on Environment and Public Works held a hearing in Washington, D.C. on June 16, 1988, on the application of NEPA to U.S. participation in actions of international financial institution. Testimony was received from 11 witnesses including representatives of Federal agencies, public interest groups and other organizations. The Environment and Public Works Committee subsequently reported out an original bill, S. 2753, which was similar in content to S. 1045.

Again, on June 1, 1989, the Subcommittee on Superfund, Ocean, and Water Protection of the Committee on Environment and Public Works held a hearing in Washington, D.C. on S. 1045 and S. 1089, bills amending the National Environmental Policy Act. Testimony was received from six witnesses including representatives of four federal agencies, and professional environmental law experts.

Markups

The Subcommittee on Superfund, Ocean, and Water Protection met to consider S. 1045 and related legislation on August 1, 1989. An amendment was offered by Senators Lautenberg and Durenberger to add an action-forcing mechanism to the bill. Two years after enactment, executive directors to the MDBs will be required

to oppose or abstain from votes on loans if an environmental assessment is not available 120 days prior to the vote. This amendment was adopted by voice vote, as were technical correction amendments offered by Senator Symms. The bill as amended, was recommended reported to the full Committee by voice vote.

The bill was reported without further amendment, by the Committee on April 24, 1990, by voice vote.

Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report. No rollcall votes were taken during consideration of this bill.

Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

Congressional Budget Office,
U.S. Congress,
Washington, DC, May 16, 1990.

Hon. Quentin Burdick,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1045, a bill to establish a National Environmental Policy on the participation of the United States in international financing, as ordered reported by the Senate Committee on Environment and Public Works on April 24, 1990.

The bill expands the provisions in current law that govern the use of environmental impact assessments for projects funded by international financial institutions (IFIs). Under S. 1045, the United States would request all IFIs to prepare and submit environmental impact assessments. These assessments would follow guidelines to be promulgated by the Council on Environmental Quality (CEQ). The assessments would be reviewed by the Treasury Department to verify whether minimum criteria are met.

Enactment of S. 1045 is not expected to have a significant impact on the federal budget. The additional responsibilities for the Treasury Department and the CEQ are expected to be minimal.

Enactment would have no affect on the budgets of state and local governments.

Should you or your staff have any questions on this estimate, the CBO staff contact is Kent Christensen at 226-2840.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE NATIONAL ENVIRONMENTAL POLICY ACT

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PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I—DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) * * *

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SEC. 106. (a) On and after July 1, 1991, at least 120 days prior to a vote or approval by the United States on a proposed action, significantly affecting the quality of the human environment, proposed to be financially assisted in whole or in part by an institution listed in section 22 of the Export-Import Bank Act Amendments of 1986, the United States official responsible for voting on or approving such action shall request of the institution a detailed statement which meets the criteria set forth pursuant to subsection 106(b). All information received as a result of such request shall accompany the proposal through United States agency review processes, and shall be made available to borrower and donor countries and to the public.

(b) For purposes of this section, the Council on Environmental Quality shall identify and promulgate internationally accepted criteria for environmental impact assessment of international financial activities, sufficient to facilitate the consideration of environmental impacts in lending decisions. Such criteria shall include the solicitation of public comments, review of alternatives, and any other criteria found to be internationally recognized as an element of adequate environmental impact assessment.

(c) The responsible official identified in subsection (a) shall not be required to verify the accuracy of the content of documents obtained under this section, except as necessary to identify—

(1) minimum criteria which are not met; and

(2) information pertinent to environmental impact assessment absent from the statement, but available to the responsible official through means other than the institution proposing the action.

A statement of findings under this subsection should accompany the proposed action through agency review processes, and shall be made available to borrower and donor countries and to the public.

(d) Beginning two years after the date of enactment of this section—

(1) the Secretary of the Treasury shall instruct the United States Executive Director of each institution referenced in subsection (a) not to vote in favor of any action proposed to be taken by the respective institution which would have a significant effect on the environment, unless an assessment meeting the criteria of subsection (b), including a comprehensive summary of such assessment, has been available to the Executive Director and all other interested Federal agencies, and interested members of the public for no less than one hundred and twenty days prior to the date of the vote; and

(2) environmental assessments and summaries of such assessments referred to in paragraph (1) shall be made available by the Secretary of the Treasury to interested Federal agencies and interested members of the public.

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